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Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No. 1199 1989

APPELLANT:

Munna alias
Ramlal Sharma
S/o Promod Kumar Sharma,
Aged about 25 years
resident of Pushpraj Colony,
Dist. Satna, M.P.

VS

RESPONDENT:

State of Madhya Pradesh
Through Police Station
Manendragarh,
Dist. Surguja.

CRIMINAL APPEAL UNDER SECTION 374 OF
CODE OF CRIMINAL PROCEDURE.

14-12-89
N.R. Shukla

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14/12/89

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH: -</u> <u>HON'BLE MR. L.C. BHADOO AND</u> <u>HON'BLE MR. DILIP R. DESHMUKH. JJ.</u> <u>23-6-2005</u> Mrs. Indira Tripathi, counsel for the appellant. Mr. Akhil Mishra, Panel Lawyer for the State/respondent. Oral. The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. being aggrieved by the judgment of conviction and sentence dated 28th November, 1989, passed by the Additional Sessions Judge, Manendragarh, in Sessions Trial No.193/87, whereby the learned Additional Sessions Judge after holding the accused guilty for the commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life. In short, the prosecution case relevant for the disposal of this appeal is that on 2nd July, 1987, at about 12 noon the accused/appellant and deceased Rani were sitting in the garden of PW-1 Phoolmat below the Kathel tree, at that time, the accused asked deceased Rani to cook meal which she refused, on that accused attacked her with a knife, caused injury on right side of the stomach and ran away. Deceased Rani narrated the whole story to PW-1 Phoolmat & PW-7 Asfaq Ahmed, thereafter, she went to the house of PW-2 Pramila Chhatterjee, there	

आदेश पत्रक

मामला क्रमांक

C.A. 1199/87

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	- 2 -	she narrated the whole story to Ramgopal Wari, Awdhesh Singh & M.D. Banerjee. The matter was reported to the Police on the same day at about 3.30 p.m. in Police Station: Manendragarh, the Police registered Crime No.234/87 and sent Rani to Primary Health Centre: Manendragarh for medical examination. After examining her, dying declaration (Ex.P-16) was recorded by Executive Magistrate Alfazuddin and thereafter, she was referred for treatment to the Government Hospital, Ambikapur, where she breathed last ^{हो गई} 4-7-1987 and died at about 11 O' clock in the night. Post-mortem was conducted by Dr. P.K. Shrivastava (PW-12) & Dr. A.K. Bajaj, and they opined that Rani died on account of shock due to excessive bleeding. The accused was taken into custody and during the custody, he gave memorandum Ex.P-6 and took the Police to the scene of occurrence from where under Ex.P-2 two Hawai chappals were taken into possession by the Police. Plain soil as well as blood stained soil were taken into possession by the Police from the house of Pramila Chhatterjee (PW-2), and in pursuance of the memorandum Ex.P-6 given by the accused, the accused got recovered the weapon of offence, knife (Article 'C') from a bush near Hansia river under Ex.P-7. After completion of investigation, charge sheet was filed against the accused/appellant before the Judicial Magistrate, Manendragarh, who committed the case for trial to the Sessions Judge, Surguja, from

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आदेश पत्रक
 मामला क्रमांक 1199/89 सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	where the learned Additional Sessions Judge received the case on transfer. In order to prove charge against the accused/appellant, the prosecution has examined 15 witnesses. Statement of the accused was recorded by the learned Additional Sessions Judge under Section 313 of the Cr.P.C., which he denied the prosecution evidence and stated that the prosecution witnesses are false, he has been falsely implicated in the crime. One witness namely Ramgopal Wari was examined in defence. After hearing the arguments, learned Additional Sessions Judge convicted and sentenced the accused/appellant in the manner mentioned in the earlier part of this judgment. We have heard learned counsel for the accused/appellant and learned Panel Lawyer on behalf of the State/respondent. Learned counsel for the accused/appellant did not dispute the fact about the nature of death of the deceased as homicidal. PW-12 Dr. P.K. Shrivastava has stated on 6-7-1987 he conducted post-mortem on the body of Rani on the request of Police Station: Manendragarh and found that there was one stitched wound on the right side of the stomach near the 8th rib which was of size 1 $\frac{1}{2}$", colour of the injury was red and clotted blood was present. After dissection he found that the wound was present in great vein, stab injury in the right hypochondrium region, in anterior auxiliary line, which was cause of	

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आदेश पत्रक

मामला क्रमांक

G.A. 1199/89 सन् -200-

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-4-	death of Rani. The doctor opined that the cause of death was shock as a result of excessive bleeding and the injury was dangerous to life in the ordinary course of nature. His report is Ex.P-12. Apart from that PW-1 Phoolmat has stated that Rani disclosed her that her husband Munna has caused injury with knife and similar evidence has been given by PW-7 Asfaq Ahmed. Therefore, in view of the above evidence, it stands proved that the nature of death of the deceased was homicidal. As far as involvement of the accused in committing the crime is concerned, learned counsel for the accused/appeillant has not disputed this fact also. PW-1 Phoolmat has stated that on the fateful day, deceased Rani and her husband Munna were sitting in the garden below the Kathel tree, and during that time two mangos fell down from a tree which were collected by Rani. ^{^ She ^} Rani asked ^{^ Rani ^} her to take one and give another to her, thereafter, she went inside the house. Thereafter, she heard the cries of Rani that Munna has attacked her with knife and she saw that there was a knife wound on the right side of the stomach of Rani and the accused ran away towards south side of the garden. Rani informed her that Munna has attacked on her with knife and she went towards north side to the house of Bengali. In cross-examination, this witness has stated that on that day the accused and deceased went to the market and before the incident Munna came to her house and enquired about Rani, then she replied to Munna that she does not know.

(पीछे देखिये)

आदेश पत्रक

मामला क्रमांक G.A. 1199/89 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the garden Asfaq was also there. PW-7 Asfaq Ahmed has corroborated the evidence of PW-1 Phoolmat and he has also stated that Rani made dying declaration to the effect that the accused has attacked her with knife. PW-2 Pramila Chhatterjee has stated that on the fateful day Rani came to her house and she was lying down on the earth, on enquiry by her Rani informed that that her husband has attacked her with knife because he was doubting her fidelity. Thereafter, she disclosed this fact to the neighbours, they came on the site, they informed the Police and thereafter, the Police vehicle came. Rani made the report Ex.P-19 to the Police in which she mentioned that her husband was doubting her fidelity and he used to tell her not to talk to anybody. After quarrelling with her in the garden her husband assaulted with knife on her stomach, as a result of which blood was oozing out from the place of knife injury. She has already disclosed this fact to Ramgopal Wari, Awdhesh Singh & M.D. Banerjee. Therefore, in view of the evidence Rani made dying declaration before PW-1 Phoolmat, Ex.P-19, before the Police and before PW-7 Asfaq Ahmed. This dying declaration stands corroborated by the fact of recovery of knife in pursuance of the information given by the accused under Ex.P-7 and recovery memo Ex.P-8. Medical evidence also corroborates the dying declaration, because Dr. Vinod Vajpayee (PW-10) has stated that on 2-7-1987 he was working in the Government Hospital,	

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आदेश पत्रक

मामला क्रमांक G.A. 1199/89 सन् 200-

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Manendragarh, on that day at about 4.05 p.m. Vijay Kumar Singh, Constable, brought Rani in the hospital, where he examined and found that blood pressure was not recordable, even pulse were not recordable, her heart & blood pressure were bad and the stomach was in swollen condition. PW-12 Dr. P.K. Shrivastava has proved the injury on right side of the stomach. Therefore, in view of the above circumstantial evidence viz., dying declaration, medical report, recovery of knife prove the involvement of the accused in committing the crime. Now, coming to the question about the nature of offence committed by the accused, learned counsel for the appellant submitted that when the deceased refused to cook meal, the accused/appellant became angry and stabbed with knife without any preparation, pre-plan or pre-meditation. Therefore, the offence falls under the category of Section 304 Part-II of the I.P.C. On the other hand, learned Panel Lawyer submitted that it has come on record that the accused was doubting the fidelity of the deceased which was disclosed by Rani to Phoolmat and others, and that is why the accused attacked the deceased with knife with intention to cause death. Having heard learned counsel for the parties, we have perused the record. In cross-examination PW-1 has stated that the accused was doubting the fidelity of the deceased. She further stated that when	

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44

आदेश पत्रक
मामला क्रमांक G.A. 1199/89 सन् 200-

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 7 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Rani gave her one mango, at that time both were in cheerful mood and laughing, after taking mango she went inside the house. Ten minutes thereafter, she heard the voice of Rani that she has been attacked with knife. PW-5 Babulal has stated that at about 12 noon he came out of the house to attend the call of nature and he saw that Munna was requesting Rani to go and cook meal, Rani refused to cook meal, on that Munna said "you should go for cooking meal", otherwise, he will beat her, on this Rani replied "do whatever you want". On this Munna took out the knife and attacked on right side of the stomach and ran away, blood started oozing out of the injury. In view of the above evidence of this witness, it appears that Munna attacked Rani on a simple dispute of refusing by Rani to cook meal. Therefore, in view of the above evidence it cannot be inferred that the accused assaulted Rani with intention to cause her death. But from the above facts, it is definite that while attacking with knife the accused has definite knowledge that by attacking Rani on stomach with knife he is likely to cause death of Rani. He attacked Rani on a simple dispute without any pre-plan or pre-meditation. In the circumstances, in our considered opinion, offence under Section 304 Part-II of the I.P.C. is made out instead of Section 302 of the I.P.C. In the result, the appeal is partly allowed. The accused is acquitted of the charge under Section 302 of the I.P.C., instead	

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आदेश पत्रक

मामला क्रमांक G.A. 1199/89 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	- 8 -	
	thereof, we convict the accused under Section 304 Part-II of the I.P.C. and sentence him to undergo rigorous imprisonment for ten years. Parties are entitled for certified copy of this order.	
	Sd/- L.C. BHADOO Judge	Sd/- Dilip Raosaheb Deshmukh Judge

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